

to make collocation available at all accessible terminals on the loop, [although] we acknowledge that the incumbent's network was not designed to house additional equipment of competitors."¹⁹⁶ Nonetheless, the Commission's rules unequivocally require that ILECs allow competitors to collocate in "all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities."¹⁹⁷ Obviously, then, this requirement includes remote terminals.

However, in deploying new network topologies, such as those contemplated by Project Pronto, ILECs seem to be attempting to carve out exceptions for the requirement that they permit collocation in remote terminals, or similar structures. SBC's petition for waiver of the *Merger Conditions* emphasized that "the physical space limitations of RTs" will have the effect of *precluding collocation for all but a few CLECs*, and that moreover, the new remote terminals slated to be deployed by SBC as part of Project Pronto will have "little or no excess space [for collocation]."¹⁹⁸ SBC, while acknowledging its collocation obligations under the Commission's rules, is frank in its stark evaluation of the opportunity for competitors to collocate at the remote terminal. SBC admits, in essence, that under the configuration now blessed by the Commission, the deployment of Project Pronto will not accommodate collocation in any commercially meaningful way. In granting SBC's request for waiver of the *SBC/Ameritech Merger Conditions*, the Commission merely required SBC to collaborate with the competitive industry to address and solve the collocation issues presented by the deployment of Project Pronto.¹⁹⁹ However, in this rulemaking the Commission must amend its rules to

¹⁹⁶ *UNE Remand Order*, ¶ 221.

¹⁹⁷ *Local Competition First Report and Order*, ¶ 573.

¹⁹⁸ *SBC Waiver Request*, 2 (emphasis added).

¹⁹⁹ *Project Pronto Order*, ¶ 37.

clarify that SBC, and indeed all ILECs, must provide collocation in remote terminals, CEVs, and huts.

Specifically, the Commission must unequivocally state that the obligation to provide physical collocation does not end at the central office. Rather, the same exact obligations applicable to central office collocation are applicable to remote terminals and associated structures, including cost allocation and existing space allocation rules. The requirements of Section 251(c)(6) and the Commission's rules, including the requirement to impose only cost-based rates for collocation facilities²⁰⁰ and the obligation to provision collocation space on a first-come, first-served basis apply with equal force to remote terminals. Section 251(c)(3) cannot be fully implemented nor its purposes fully served absent such interconnection rights. Therefore, the Commission must amend its rules in order to eliminate any question in that regard. ILECs deploying Project Pronto-type proposals, which cite increasingly small cabinets and remote terminals as a reason for them to be granted an exception from the Commission's collocation rules, must be set straight. The Commission must not allow ILECs deploying fiber-fed remote terminals to be the arbiters of the Commission's collocation rules. Rather, with the trend toward smaller, smarter equipment and the corresponding decrease in the amount of space necessary to allow physical collocation, the ability to collocate at the remote terminal in accordance with the Commission's rules is even more uncomplicated.

The Joint Commenters propose that the Commission require that ILECs reserve, at a minimum, 50% of space in new remote premises (i.e., remote terminals, CEVs, cabinets and huts that house ILEC equipment) for use by CLECs to physically collocate their equipment. In

²⁰⁰ *Local Competition First Report and Order*, ¶¶ 570-581, *Advanced Services First Report and Order*, ¶¶ 20-24.

existing remote premises, all remaining available space must be reserved for such purposes, not to exceed 50% of the total space in the premises.

In addition, the Commission should require ILECs to allow competing carriers to place their own line cards in remote terminals. Even where physical collocation space is available, it may be cost prohibitive to collocate a traditional DSLAM at a remote terminal. Alternatively, the means to connect the DSLAM to the unbundled fiber feeder network element may not be commercially viable. The Joint Commenters note that Illinois has ordered Ameritech to install Covad's and Rhythms' line cards in Ameritech's remote terminals.²⁰¹ Where equipment is not capable of being physically collocated within same remote premises due to interference or size restrictions, the Commission should expressly require that collocation arrangements must be made available on ILEC-controlled premises adjacent to the remote terminals and CLECs should automatically be granted easements or access to same rights of way available to ILECs. Only by amending its rules in this fashion can the Commission ensure that the procompetitive goals of the Act, including Section 251(c) and Section 706, are met.

D. VIRTUAL COLLOCATION AT REMOTE PREMISES SHOULD BE AVAILABLE AS AN OPTION TO BE EXERCISED AT THE REQUESTING CARRIER'S – NOT THE ILEC'S – DISCRETION

The Joint Commenters submit that the Commission should amend its rules to specifically and unequivocally provide competitive providers of advanced services with the legal right to elect to virtually collocate – solely at their option – equipment at all accessible terminals on the loop. Like the obligation to provide physical collocation at remote premises, the

²⁰¹ See Petitions of Covad Communications Co. and Rhythms Links, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell
(continued...)

Commission has tacitly recognized the rights of CLECs to virtually collocate equipment at remote premises, noting in the *UNE Remand Order* that “in some cases, technicians may not need to enter the cabinet or vault at all because virtual collocation arrangements will satisfy the needs of all parties.”²⁰² Under Section 51.321(b) of the Commission’s rules, CLECs have the right to obtain access to UNEs through any technically feasible method, including either physical or virtual collocation. Specifically, Section 51.321(b) provides, in relevant part, that: “technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to: physical collocation and virtual collocation at the premises of an incumbent LEC;” and that an “incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC’s network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.”²⁰³ Therefore, under the Commission’s existing rules, ILECs already must provide virtual collocation at the CLEC’s option. However, in the Joint Commenters’ experience, ILECs continue to insist that virtual collocation is available only at the ILEC’s option. Accordingly, the Commission should amend its rules in order to eliminate any room for argument from the ILEC that a CLEC, at its option, has the right to virtually collocate equipment.

(...continued)

Telephony Company d/b/a Ameritech Illinois, Docket Nos. 00-0312/00-0313, Arbitration Decision, Aug. 17, 2000, at 32.

²⁰² *UNE Remand Order*, ¶ 221.

²⁰³ 47 C.F.R. § 51.321(b) and (d).

The conventional wisdom holds that physical collocation is inherently superior to virtual collocation. In certain circumstances, however, virtual collocation may be preferable for particular CLECs. Although the Commission has long recognized that "interconnection through physical collocation is the optimal means to realize [the] benefits of [expanded interconnection]," it acknowledges that "virtual collocation also produces [the] benefits [of physical collocation] and is in the public interest."²⁰⁴ CLECs may seek virtual collocation arrangements for a number of reasons, including to take advantage of potential efficiencies in maintenance, operations or testing. Therefore the Commission should amend its rules to provide that CLECs have the right to exercise the option to virtually collocate, even if physical collocation is possible, including at the remote terminal. Such rights should include, but not be limited to, the right place ILEC-purchased line cards in remote terminals, and should be available upon request to CLECs. Moreover, in promulgating its rules, the Commission should not require transfer of title of collocated equipment to the ILEC. Furthermore, the Commission should make explicit that all rates for ILEC-provided installation, maintenance and repair should be cost-based.

E. THE ABILITY TO CROSS CONNECT MUST BE PROVIDED AT THE REMOTE TERMINAL

In the *Fifth FNPRM*, the Commission seeks comment on the technically feasible points for accessing copper distribution portion of the loop and the fiber feeder portion of the loop at remote terminal locations; and specifically, whether ILECs should be required to modify

²⁰⁴ See *Expanded Interconnection With Local Telephone Company Facilities*, 9 FCC Rcd 5154, ¶ 10 (1994) ("Expanded Interconnection Order"); see also *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7378; *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7383.

their facilities to allow carriers to interconnect and access the subloop at the remote terminal.²⁰⁵

The Joint Commenters submit that the Commission should clarify that ILECs must allow competitors to cross connect at the remote terminal on the same basis that cross connection is allowed at the central office. Moreover, as demonstrated above, the Commission should clarify that CLECs should be able to cross connect to one another.

In the *Local Competition First Report and Order*, the Commission concluded that ILECs must provide cross-connect facilities between an unbundled loop and a requesting carrier's collocated equipment.²⁰⁶ The Commission reaffirmed this obligation in the *UNE Remand Order* and required that charges for cross-connect facilities meet the cost-based standard of section 252(d)(1).²⁰⁷ Further, the Commission reiterated that the terms and conditions of providing cross-connect facilities must be reasonable and nondiscriminatory pursuant to section 251(c)(3).²⁰⁸ The Commission recognized that "such a requirement is needed wherever a competitor seeks access to the loop, because cross-connection offers a potential bottleneck, and incumbents may have the incentive to impose unreasonable rates, terms, and conditions for cross-connect facilities."²⁰⁹

The Commission's analysis applies with equal force to cross connections that occur at the remote terminal. Failure to require ILECs to allow competitors to access the subloop at the remote terminal would hobble the ability of competitors to service customers just as it would if the Commission failed to provide access to the loop at any other bottleneck point in

²⁰⁵ *Fifth FNPRM*, ¶ 133.

²⁰⁶ *See Local Competition First Report and Order*, ¶ 386.

²⁰⁷ *UNE Remand Order*, ¶ 179.

²⁰⁸ *Id.*.

²⁰⁹ *Id.*

the network. Granting ILECs a monopoly over the subloop is in direct conflict with the Commission's cross connect analysis as well as the letter and spirit of the Act. In contrast, requiring cross-connects at the remote terminal will further the Act's purposes including promoting the rapid introduction of advanced services into all markets, the promotion of facilities-based competition, investment, and innovation, and deregulation.

The Joint Commenters therefore submit that the Commission should amend its rules to specifically require that cross connections at any remote premises be allowed, and that such cross connections should be "internal" (*i.e.*, in the remote terminal). However, if adjacent collocation must be used, the Commission's rules should mandate that such adjacent arrangements be provided in such a way that cross-connections to UNEs at a remote terminal from adjacent locations are possible. Furthermore, the Joint Commenters submit that remote terminal cross-connections must be priced the same way as central office cross connections, that is, in compliance with Section 251(d)(1).

F. THE COMMISSION SHOULD AMEND ITS RULES TO REQUIRE ILECS TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS INTERFACES NECESSARY TO ORDER SUBLOOPS AND ENSURE THAT CLECS HAVE NONDISCRIMINATORY ACCESS TO REMOTE LOOP TESTING FUNCTIONS

In the *Fifth FNPRM* the Commission sought comment on what modifications, if any, to the Commission's rules governing ILECs's operational support systems ("OSS") are necessary in order to ensure CLECs nondiscriminatory access under section 251(c)(3) for purposes of placing orders for loops and subloops, including the features, functions, and capabilities of the fiber feeder portion of the loop.²¹⁰ In addition, the Commission sought

²¹⁰ *Fifth FNPRM*, ¶ 128.

comment on operational issues stemming from the deployment of fiber-fed remote terminal architectures, including its effects on the ability of carriers to test and monitor loop and subloop facilities and equipment.²¹¹ The Joint Commenters submit that the Commission must amend its rules to ensure that, as next generation architectures are deployed, competitive providers of advanced services are guaranteed nondiscriminatory access to all OSS functions necessary to place orders for all features and functions of the fiber feeder portion of the subloop. Further, the Commission must amend its rules to ensure that CLECs have access to the remote subloop testing functions on a nondiscriminatory basis, and are capable of performing the testing function on their own behalf to the extent technically feasible and that the ILECs possess the same ability.

The Commission recognized in its *Local Competition First Report and Order* that nondiscriminatory access to OSS “is essential to promote viable competitive entry.”²¹² Therefore, the Commission must ensure that the appropriate OSS functionalities are available to all CLECs providing competitive services through ILEC-owned remote terminals, and specifically, that CLECs are able to gain access to all OSS functions necessary to place orders for all features and functions of the fiber feeder portion of the subloop. ILECs will predictably trot out their usual array of arguments that such OSS functionality is not technically feasible. As it has in the past, the Commission should see through these smokescreens. In ensuring that ILECs meet the obligation to provide CLECs ordering capability for the subloop and its features and functions, the Commission should take an approach similar to the one it took in the *Line*

²¹¹ *Id.*

²¹² *Local Competition First Report and Order*, ¶ 516.; see also *SBC Texas Order*, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 (rel. June 30, 2000); *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

Sharing Order where the Commission ordered ILECs to “work with competitive LECs on an ongoing basis to design, implement, and maintain efficient and effective OSS interfaces . . . [that provide access to] the loop in the same ordering and provisioning time intervals that the incumbent provides for its own xDSL-based service” and that such OSS interfaces be developed on a collaborative basis.²¹³

In addition, the Commission should require that such OSS interfaces be made available no later than 180 days following the release of the Commission’s order in the *Fifth FNPRM*.²¹⁴ Further, as it did in the *Line Sharing Order*, the Commission should admonish the BOCs that “that a failure to implement OSS modifications within the time frame we contemplate in this Order could be grounds for finding that a BOC is not providing nondiscriminatory access to unbundled network elements under section 271 of the Act.”²¹⁵

Besides having nondiscriminatory access to ordering functionalities, once loops are ordered and provisioned, CLECs must have the ability to perform testing of loops to the same extent as the ILEC. The Joint Commenters submit that in order to comply with the requirement that ILECs provide nondiscriminatory access to UNEs pursuant to Section 251(c)(6) of the Act, the ILECs must provide access to the same remote loop testing functionality as the ILECs make available to themselves. The Commission has a track record of recognizing and enforcing such

²¹³ The Commission noted that the OSS development plan should: “include specific details of the process including, a timeline outlining how the collaborative effort will proceed, with milestones for resolution of issues, and the names and all necessary contact information for the employee who will be responsible for addressing business complaints that arise in the collaboration process and during the negotiation of the relevant interconnection agreements or amendments.” *Line Sharing Order*, ¶ 130.

²¹⁴ *Line Sharing Order*, ¶ 130.

²¹⁵ *Line Sharing Order*, ¶¶ 106-107.

obligations.²¹⁶ The Commission recognized such an obligation in the *Line Sharing Order*, rejecting a proposal that CLECs be required to rely on the incumbent LEC's testing of loops in a line sharing arrangement.²¹⁷ The Commission noted that the inability to perform testing on its own behalf, or in a less efficient way than the ILEC, "creates an opportunity for discriminatory incumbent LEC activity, such as the imposition of artificial delays and requirements for unnecessary and costly manual intervention by either the competitive LEC or incumbent LEC."²¹⁸ Accordingly, the Commission concluded that:

*We stress that incumbents may not use their control over loop testing access points and mechanisms for anti-competitive or discriminatory purposes, and that we will remain attentive and ready to respond to any reported anti-competitive incidents relating to competitive LEC access to loop testing mechanisms.*²¹⁹

Similarly, the Commission should apply the same obligation to ILECs in the context of remote terminals, and ensure that CLECs do not suffer discrimination due to an inability to conduct their own testing of loops provisioned through remote terminals. Moreover, the Commission must amend its rules to require that CLECs have nondiscriminatory access to fiber feeder plant (i) in conjunction with copper distribution plant and any attached electronics, or (ii) as a subloop element separate from copper distribution.

²¹⁶ In the *Bell Atlantic-New York Order*, the Commission recognized the importance of the ability of competing carriers to provision and test their own xDSL loops. *See Bell Atlantic New York Order*, ¶ 319.

²¹⁷ *Line Sharing Order*, ¶ 117

²¹⁸ *Id.*

²¹⁹ *Line Sharing Order*, ¶¶ 117-118 (emphasis added).

G. THE COMMISSION SHOULD ADOPT A NEW BROADBAND UNE, THE SUBLOOP ENHANCED EXTENDED LOOP (“SEEL”)

In the *Fifth FNPRM*, the Commission sought comment generally on “whether the deployment of new network architectures necessitates any modification to or clarification of the Commission’s rules concerning subloops, as well as those pertaining to line sharing.”²²⁰ The Joint Commenters submit that in addition to the other modifications to the Commission’s rules discussed in these comments, the Commission should amend its rules and establish an “intraloop EEL” known as the Subloop Enhanced Extended Loop or “SEEL” consisting of : 1) the copper subloop distribution; and 2) the fiber subloop feeder, with multiplexing. Establishment of the SEEL is necessary to guarantee that the unbundled loop is capable of supporting advanced services, consistent with the Commission’s unbundling and nondiscrimination rules which entitle CLECs to the full features, functionalities, and capabilities of the loop, regardless of transmission media or existence of remote concentration devices or other loop electronics.

In the *UNE Remand Order* in ordering that the subloop be made available as a UNE, the Commission concluded that lack of access to unbundled subloops “materially diminishes a requesting carrier’s ability to provide services it seeks to offer,” and that

access to subloop elements is likely to be the catalyst that will allow competitors, over time to deploy their own complementary subloop facilities, and eventually to develop competitive loops. Lack of access to subloops discourages competitive LECs from attempting to combine their won feeder plant with the incumbent distribution plan to minimize their reliance on the incumbents’ facilities.²²¹

²²⁰ *Fifth FNPRM*, ¶ 123.

²²¹ *UNE Remand Order*, ¶ 205.

As the Commission acknowledged in the *Fifth FNPRM*, since the release of the *UNE Remand Order* “there have been a number of developments, including new product introductions.”²²² The Joint Commenters agree with the Commission that new developments, including the announcement of the plan to deploy on a massive basis, remote terminals in conjunction with DLC architecture, necessitates that the Commission establish the SEEL.

In light of the penetration of fiber deeper into the neighborhood under Project Pronto-type initiatives, the SEEL is the necessary analog of the EEL. When requiring that the EEL be made available in those areas where ILECs have withdrawn access to unbundled switching element, the Commission recognized that the EEL levels the competitive playing field by allowing CLECs “to aggregate loops at fewer collocation locations and increase their efficiencies by transporting aggregated loops over efficient high-capacity facilities to their central switching location. Thus, the cost of collocation can be diminished through the use of the EEL.”²²³ The establishment of a “SEEL” would provide similar efficiencies by obviating the need for competitive providers of advanced services to collocate at each and every remote terminal (which, as noted above, ILECs admit have very limited space for collocation) serving customers that competitive providers wish to reach.²²⁴

The SEEL meets the 251(d)(2)(B) “impair” standard for unbundling.²²⁵ In the *UNE Remand Order* the Commission concluded that the failure to provide access to a non-

²²² *Fifth FNPRM*, ¶ 119.

²²³ *UNE Remand Order*, ¶ 288.

²²⁴ That is not say that the Commission must not provide both collocation at remote terminals as we as the SEEL.

²²⁵ The Section 251(d)(2)(A) “necessary” standard modifies only those elements that are “proprietary in nature.” Because no component of the Broadband UNE is “proprietary in nature” it is unnecessary to undertake an analysis of the applicability of that section to the
(continued...)

proprietary network element “impairs” a requesting carrier within the meaning of section 251(d)(2)(B) if, taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier’s ability to provide the services it seeks to offer.²²⁶ In order to evaluate whether there are alternatives actually available to the requesting carrier as a practical, economic, and operational matter, the Commission examines the totality of the circumstances associated with using an alternative. Specifically, the Commission considers the cost, timeliness, quality, ubiquity, availability of the element from a third-party provider, and operational issues associated with use of the alternative.²²⁷

In requiring that ILECs provide unbundled access to the subloop, the Commission concluded that “lack of access to unbundled subloops at technically feasible points throughout the incumbent’s loop plant will impair a competitor’s ability to provide services that it seeks to offer..., and self-provisioning subloop elements, like the loop itself, would materially raise entry costs, delay broad-based entry, and limit the scope and quality of the competitive LEC’s service offerings.”²²⁸ Indeed, the Commission concluded that subloop elements “are the most time-

(...continued)

Broadband UNE. *See UNE Remand Order*, ¶ 208 (“The record does not indicate, nor do commenters argue, that subloops are proprietary. Moreover, we do not discern any copyright, patent, or trademark secrecy implications to subloop unbundling.”)

²²⁶ *UNE Remand Order*, ¶¶ 51-100.

²²⁷ *Id.*

²²⁸ *UNE Remand Order*, ¶ 209.

consuming and expensive network element to duplicate on a pervasive scale, and that the cost of self-provisioning subloops can be prohibitively expensive.”²²⁹

Applying these factors to the SEEL, the result of the analysis is the same: it is clear that self provisioning and third party supplier alternatives for transport and subloop elements are not cost-effective, ubiquitous, or timely available. Moreover, the lack of access to fiber feeder and necessary electronics materially diminishes requesting carriers’ ability to provide competitive advanced services. Furthermore, the Commission acknowledged in the *UNE Remand Order* that “that the incumbent’s network was not designed to house additional equipment of competitors.”²³⁰ Accordingly, the Joint Commenters submit that the Commission should take a double-barreled approach to this collocation crunch, by both amending its collocation rules to allow remote terminal collocation, *and* by amending its rules to recognize the SEEL as described herein.²³¹

IX. THE COMMISSION SHOULD AMEND ITS RULES TO REQUIRE ILECS TO NOTIFY COMPETING CARRIERS AT LEAST TWELVE MONTHS PRIOR TO PLANNED ROLLOUT WHERE THEY ARE DEPLOYING FIBER LOOP FACILITIES AND SHOULD BE REQUIRED TO MAINTAIN EXISTING COPPER FACILITIES IN THOSE AREAS FOR A TEN-YEAR TRANSITION PERIOD

In its approving SBC’s petition to modify the *Merger Conditions*, the Commission concluded that SBC’s commitments to: (1) refrain from retiring any copper pairs for one year; (2) refrain from retiring (over a three year period) more than 5% of the copper pairs

²²⁹ *Id.*, ¶ 212.

²³⁰ *UNE Remand Order*, ¶ 221.

²³¹ In the alternative, the Commission should make clear that where NGDLC-provided loops are found in the ILEC network, they constitute a combination of UNEs, copper distribution subloop, multiplexer(s), and fiber feeder subloop that must be provided in combinations subject to Section 51.315(b) of the FCC rules.

terminated on the Main Distribution Frames of its central offices; (3) disclose the ILEC's general decision-making criteria for retiring any copper plant; (4) notify CLECs of its intent to retire any copper plant at least 180 days before such retirement; and (5) provide competitors with an opportunity to buy any copper plant marked for retirement at net book value or the highest competitive bid satisfied the public interest.²³² The Joint Commenters submit that the Commission, consistent with the disclaimer made by the Commission – that the action taken in the Pronto order in no way prejudged the outcome of this proceeding – should amend its rules as described in these comments.

Deployment of fiber-fed remote terminals can increase competition only if they supplement, but do not replace, the existing infrastructure used to reach consumers. As the Commission has recognized, the continued utility of competitive provider's investment in advanced services facilities is dependent upon access to suitable copper facilities to reach its customers. The Commission has acknowledged: "in cases where the incumbent multiplexes its copper loops at a remote terminal to transport the traffic to the central office over fiber DLC facilities, a requesting carrier's ability to offer xDSL service to customers served over those facilities will be precluded, unless the competitor can gain access to the customer's copper loop before the traffic on that loop is multiplexed."²³³

Under Project Pronto-type architectures, however, many of the customers targeted by competitive providers of advanced services will be served by remote terminals with a combination fiber/copper loop. Unless the Commission takes steps to ensure that competitors can continue to provide their services, regardless of whether SBC has deployed a remote

²³² *Project Pronto Order*, App. A.

terminal, Project Pronto will harm competition and will slow the deployment of advanced services technology in contravention of Section 706 of the 1996 Act.²³⁴ Furthermore, the ILECs will be given carte blanche to perform an end-run around their Section 251(c)(3) unbundling requirements.

The solution to this problem is to 1) require ILECs to notify competitors at least 12 months prior to the deployment of remote terminals; and 2) require ILECs to continue to maintain their existing copper loop infrastructure so that these loops may be provided as network elements to requesting telecommunications carriers. The Commission should prohibit ILECs from removing currently in-service copper facilities when they overlay remote terminals over the existing architecture. As Jato proposed in the Project Pronto proceeding, ILECs that deploy Project Pronto-type network architectures should be required to maintain copper loop plant as unbundled network elements for at least a transition period of 10 years.²³⁵ The Joint Commenters support adoption of that requirement here for all ILECs. The existing copper loops will continue to be useful for DSL and other purposes for at least this time period, especially if bridge taps or load coils necessary only for POTS service are removed from the loops. No pro-competitive purpose would be served by removing these valuable and still functional facilities from the pool of available loops. By contrast, preservation of these loops for a transition period

(...continued)
²³³ *Id.*, ¶ 2.

²³⁴ Pub. L. 104-104, 110 Stat. 153, Title VII, § 706 (Feb 8, 1996), *codified at* 47 C.F.R. § 157, Note.

²³⁵ See Ex Parte Letter of Jato Communications, CC Docket No. 98-141 (May 23, 2000) ("*Jato Ex Parte*").

will ensure that carriers have access to network elements necessary to provide non-ADSL based services, now and in the future.

As Jato and other Commenters demonstrated in the Project Pronto proceeding, such a requirement does not require the Commission to expand the Commission's unbundling obligations.²³⁶ The existing copper loops already deployed in the ILEC networks are "network elements" subject to Section 251(c)(3) obligations regardless of whether the ILEC deploys remote terminals in its service territory.²³⁷ The Commission has already made clear that "dead count" loops and "vacant" copper in the network are within the definition of an unbundled loop.²³⁸ Once an ILEC deploys fiber-fed remote terminals, the existing copper loop capacity becomes capacity that is "in place and easily called into service" as an unbundled local loop.²³⁹ Therefore, even if the ILEC were not using these loops to serve their own customers, the copper should continue to be made available to competitive providers of DSL services such as Jato as an unbundled local loop network element.

Moreover, the obligation to provide these copper loops on an unbundled basis applies with full force to loops provided through DLC arrangements such as is proposed by SBC. The Commission's rules requires ILECs to "provide competitors with access to unbundled loops regardless of whether [the ILEC] uses integrated digital loop carrier technology, *or similar remote concentration devices*, for the particular loop sought by a competitor."²⁴⁰ Often, ILECs provide access to DLC-served customers through the use of a "spare" copper loop that bypasses

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *See UNE Remand Order*, ¶ 174.

²³⁹ *Id.*

²⁴⁰ *Local Competition First Report and Order*, ¶ 383; *UNE Remand Order*, ¶ 218.

the DLC. As Jato explained in its *ex parte* in the Project Pronto proceeding, deployment of Project Pronto-type network architectures would, in effect, cause all of an ILEC's existing loops replaced by fiber to become "spare" loops.²⁴¹ Therefore, wherever an ILEC migrates a customer to the DLC environment proposed in a Project Pronto-type architecture, the ILEC has an obligation to provide unbundled loops to requesting carriers using the all-copper facilities. Accordingly, the Commission should amend its rules to make explicit this obligation.

²⁴¹ *Jato Ex Parte.*

CONCLUSION

For the foregoing reasons, the Joint Commenters request that the Commission build upon its earlier *Local Competition First Report and Order* and *Advanced Services First Report and Order* and adopt the collocation rules proposed herein. The Commission should clarify and expand its collocation and unbundling rules to remove additional barriers to entry not addressed in previous orders and further level the playing field. The rules advocated herein are required to ensure that ILECs provide physical collocation as needed to implement fully Sections 251(c)(2) and 251(c)(3) of the Act and achieve the pro-competitive statutory purposes of the 1996 Act.

Respectfully submitted,

By:



Brad E. Mutschelknaus
Jonathan E. Canis
Edward A. Yorkgitis Jr.
Joan Griffin
Ross A. Buntrock
David Kirschner
David Konuch
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 955-9600
(202) 955-9782 (fax)

Attorneys for the Joint Commenters

ARBROS COMMUNICATIONS CO.
1100 Wayne Avenue
8th Floor
Silver Spring, MD 20910

THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS
SERVICES
888 17th Street, N.W.
Suite 900
Washington, D.C. 20006

COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

E.SPIRE COMMUNICATIONS, INC.
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

FAIRPOINTE COMMUNICATIONS SOLUTIONS,
INC.
6324 Fairview Road
4th Floor
Charlotte, NC 28210

INTERMEDIA COMMUNICATIONS INC.
3625 Queen Palm Drive
Tampa, FL 33169

JATO COMMUNICATIONS CORP.
1099 18th Street, Suite 700
Denver, CO 80202

KMC TELECOM INC.
1755 North Brown Road
Lawrenceville, GA 30043

METROMEDIA FIBER NETWORK
One Lexington Avenue
White Plains, NY 10601

NEWSOUTH COMMUNICATIONS, INC.
2 North Main Street
Greenville, SC 29601

PATHNET COMMUNICATIONS
11729 Sunrise Valley Drive
Reston, VA 20191

Attachment 1

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

NEW YORK, NY
LOS ANGELES, CA

MIAMI, FL

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

DIRECT LINE (202) 955-968

E-MAIL: cyorkgitis@kelleydrye.com

February 11, 2000

EDWARD A. YORKGITIS, JR.

DIRECT LINE (202) 955-9668

E-MAIL: cyorkgitis@kelleydrye.com

Ms. Raelynn Tibayan Remy
Deputy Division Chief
Investigations & Hearings
Enforcement Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Washington, DC 20554

via hand delivery

Re: LightNetworks, Inc.

Dear Ms. Remy:

LightNetworks, Inc., through its counsel, hereby seeks to enlist the assistance of the FCC's Collocation Task Force in resolving certain problems that LightNetworks is experiencing in obtaining physical collocation arrangements in BellSouth central offices. LightNetworks has diligently sought resolution of these issues through a face-to-face meeting with BellSouth on January 25, 2000, in Atlanta, as well as through correspondence and numerous phone calls. LightNetworks approaches the Task Force now that it has become apparent that these issues are not susceptible to resolution without regulatory intervention. LightNetworks seeks this intervention on an informal basis in the hope that more formal adjudication will not be required. Nevertheless, in order to move forward with its business plan, LightNetworks is prepared to proceed with whatever action is required to have these matters resolved as expeditiously as possible.

LightNetworks is a relatively new competitive local exchange carrier ("CLEC") that already has entered into interconnection agreements with BellSouth covering several southern states. Pursuant to those agreements, LightNetworks has submitted numerous applications to BellSouth to interconnect and establish physical collocation arrangements, beginning in the

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states of Georgia, Florida, Tennessee, and North Carolina. Expeditious and timely processing of these interconnection and collocation arrangements is critical to LightNetworks' ability to execute its business plan and honor commitments made to investors. However, certain actions or inactions of BellSouth are imposing serious delays.

Denial of Cageless Collocation in Offices where BellSouth Offers Virtual Collocation

BellSouth has denied LightNetworks' requests for cageless collocation in at least four (4) Atlanta area central offices on the ground that non-enclosed space for physical collocation is exhausted (*i.e.*, ATLNGAWD/WOODLAND OFFICE, ALRPGAMA/ ALPHARETTA MAIN, BUFRGAMA/BUFORD MAIN and ATLNGABU/BUCKHEAD OFFICE). A tour of these facilities revealed the existence of unused space. LightNetworks was told that the space was reserved for the future use of BellSouth. Even more troubling, BellSouth offered LightNetworks virtual collocation arrangements as an alternative option, which BellSouth has explained to LightNetworks could be accommodated using this "reserve" space.

Since rack space was available for virtual collocation arrangements in these offices, LightNetworks believes its request for cageless physical collocation on such racks could reasonably be accommodated. Until BellSouth uses these racks for its own equipment at some unspecified date in the future, BellSouth is willing to permit virtual collocation in that space but *not* cageless collocation. In LightNetworks' estimation, this blatantly violates the FCC's Rules and its March 31, 1999 order on collocation (*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-48, CC Docket No. 98-147 (Mar. 31, 1999) ("*Collocation Order*"). Section 51.323(k)(2) of the Rules clearly state that:

An incumbent LEC may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible. In addition, an incumbent LEC *must give competitors the option of collocating equipment in any unused space within the incumbent's premises*, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment.

The *Collocation Order* makes clear that the reservation of space for BellSouth's use in the indeterminate future and BellSouth's refusal to make space set aside for virtual collocation available for cageless collocation are not permitted. The *Collocation Order* found that "segregation only serves to increase the costs of collocation and decrease the amount of available collocation space." *Collocation Order*, ¶ 42.¹

¹ LightNetworks believes that the availability of space for virtual collocation reveals that space exists that could accommodate cageless collocation.

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Impermissible Restrictions on Types of Equipment That May be Collocated

Were LightNetworks to opt for virtual collocation at BellSouth's suggestion, LightNetworks would be placed at a material disadvantage. BellSouth seeks to place unreasonable and impermissible restrictions on the equipment LightNetworks desires to collocate in BellSouth central offices on a virtual basis. The FCC's Rules do not permit restrictions except on the bases that (1) the equipment will not be used for interconnection or access to unbundled network elements or (2) appropriate safety standards. 47 C.F.R. § 51.323(b). The restrictions BellSouth imposes are not covered by these two exemptions. Rather, BellSouth has refused to process virtual collocation firm order documents for equipment that is not yet OSMINE compliant and has not yet been assigned HECIG codes. LightNetworks is seeking to deploy new and leading edge equipment for which such codes have not yet been obtained and assigned by the equipment vendors, a process that can take six months. This equipment has already been shown to meet the applicable safety standards. The absence of such codes in no way bears upon the adherence of the equipment to any potentially applicable safety standards. Rather, the OSMINE process and codes in question relate to BellSouth's requirements under its legacy systems for provisioning and inventorying of CLEC equipment placed in virtual collocation spaces. BellSouth's refusal to process LightNetworks' firm order documents on these grounds plainly contravenes what Section 251(c)(6) of the Act and the FCC's Rules allow and unjustifiably frustrate the ability of competitors to deploy efficient cutting-edge facilities. At a minimum, these restrictions further highlight the need for BellSouth to make the space reserved for virtual collocation available for cageless collocation, as explained earlier.

Unreasonably High and Arbitrary Site Preparation Fees

Finally, LightNetworks has received quotes for site preparation at different BellSouth premises that vary wildly despite the fact that the parameters of the arrangements sought were largely identical. No justification has been given by BellSouth, despite LightNetworks' requests. As a result, in some cases, BellSouth seeks payment of exorbitant amounts from LightNetworks that in some cases, LightNetworks fears, may not just be unreasonably high but may also represent recovery from LightNetworks for costs that ultimately may be for the benefit of other collocators, present or future. Such recovery, of course, violates the FCC's request that ILECs recover costs for space preparation "on a pro-rated basis so the first collocator in a particular incumbent premises made not be responsible for the entire costs of site preparation." *Collocation Order*, ¶ 51.

Some examples from BellSouth's responses to LightNetworks' applications for physical collocation ("Responses") should suffice to illustrate the problem. LightNetworks has sought essentially identical collocations in a number of Florida premises, each requiring 32 square feet of space and approximately the same amount of engineering time (*i.e.*, 84 to 88 hours). Nonetheless, BellSouth's purportedly pro-rated amounts for power at some premises are almost

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400 percent what they are at other premises, a difference of many thousands of dollars. Similarly, total space preparation costs in these two offices are grossly divergent as well, by a factor of as much as 7:2, which represents a differential of several tens of thousands of dollars. Not only is there no basis for this variation – indeed, more expensive estimates often involve fewer engineering hours – but the charges for space preparation in all cases are unreasonably high, especially given that LightNetworks will supply all cabling and relay racks. BellSouth must supply only the overhead racking and power. BellSouth has provided no satisfactory explanation to LightNetworks for the discrimination between different premises or the generally high levels of the proposed charges.

BellSouth has recently filed proposed collocation site preparation charges with the North Carolina Commission. LightNetworks proposed using those BellSouth prepared rates as a proxy until final rates are issued. BellSouth declined. LightNetworks therefore seeks Commission intervention to assist the parties in establishing proxy rates until the state commissions adopt final rates.

* * * *

LightNetworks would appreciate the opportunity to discuss this matter with you in person at your earliest convenience. LightNetworks strongly believes that FCC intervention at this point and any efforts to facilitate the parties achieving common ground will be invaluable in helping LightNetworks progress in bringing competitive services to consumers expeditiously within BellSouth's operating territory. We will call you in a few days after you have had the opportunity to review this letter to discuss scheduling a meeting. Do not hesitate to contact us if you should have any questions.

Respectfully submitted,



Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.

Counsel for LightNetworks, Inc.

Enclosures

cc: Darius Withers, FCC
Trent Harkrader, FCC
Mary Jo Peed, BellSouth
Parken Jordan, BellSouth
Jeff Smock, LightNetworks
Eston Kirby, LightNetworks